APPENDIX A

Application for Disqualification and Affidavit of Bias in the District Court

Application for Disqualification of Hon. Stephen S. Chandler

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Civil Action No. 10807

Application for Disqualification

of

HON. STEPHEN S. CHANDLER

In the Matter of

PARKER PETROLEUM CO., INC., a corporation, *Debtor.*

NOW COMES the Applicant, Occidental Petroleum Corporation, by its attorneys, Howard W. Rea and Bert Barefoot, Jr., and, in accordance with the provisions of 28 U.S.C., section 144, applies for the disqualification of the Honorable Stephen S. Chandler, on the ground that he is personally biased and prejudiced against the Applicant, from deciding any motions in this cause now set for hearing on March 13, 1962, from deciding any other claims, of any nature whatsoever, asserted against the Applicant, other than as a member of the class of preferred stockholders of Parker Petroleum Co., Inc., in connection with the proceedings in the reorganization of said Parker Petroleum Co., Inc., under Chapter X of the Natural Bankruptcy Act, and from issuing any order in judgment in these proceedings in any way affecting the Applicant other than as a member of the class of preferred stockholders of said Parker Petroleum Co., Inc.

In support of this Application, the Applicant states that it has timely filed in this Court an Affidavit of Prejudice

of Hon. Stephen S. Chandler, executed on behalf of Applicant by Armand Hammer, its President, and certified in accordance with 28 U.S.C., section 144, and that said Affidavit set forth facts showing personal bias and prejudice against Applicant on the part of said Judge.

WHEREFORE, it is prayed that this Application be granted.

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818-17th Street
Denver 2, Colorado

BERT BAREFOOT, JR.
Bert Barefoot, Jr.
Barefoot, Moler & Bohanon
1405 Liberty Bank Building
Oklahoma City 2, Oklahoma

CERTIFICATION

The undersigned, counsel of record for Occidental Petroleum Corporation, hereby certify that the foregoing Application for Disqualification of Hon. Stephen S. Chandler is made in good faith.

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Howard W. Rea
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Affidavit of Disqualification of Hon. Stephen S. Chandler

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Civil Action No. 10,807

Affidavit of Disqualification

of

Hon. Stephen S. Chandler

In the Matter of

Parker Petroleum Co., Inc., a corporation, *Debtor.*

State of Colorado)
City and County of Denver) ss:

Armand Hammer, being duly sworn, deposes and says:

1. He is the President and principal executive officer as well as a director of Occidental Petroleum Corporation of Los Angeles (hereinafter called "Occidental") a party to the above-entitled proceedings, and makes this affidavit as the principal officer of Occidental and on its behalf.

2. These proceedings and in particular two motions to be heard herein praying for certain action or relief against Occidental are now pending before the Hon. Stephen S. Chandler.

3. Affiant believes and avers that the Judge before whom the said motions in these proceedings are now pending, the Hon. Stephen S. Chandler, has a personal bias and prejudice against affiant and against Occidental and its management.

4. The facts and reasons for the belief that said personal bias and prejudice exists are numerous prejudiced or biased statements and remarks made by the said Judge at hearings in the proceedings, which statements and remarks, more fully set forth below, collectively and cumulatively express hostile and preconceived opinions of affiant's

actions and character, prejudgment of and fixed opinions concerning the facts and law here involved, or personal rancor and bias on the part of the Judge, directed toward affiant and Occidental, and which appear and which affiant believes to be motivated by resentment, irritation or frustration at the difficulties encountered by the Judge in attempting to press through a plan of reorganization for the debtor, at being reversed by a Court of Appeals upon conclusions to which the said Judge obviously still adheres, or at inability to obtain substantial financial participation or support from Occidental for the proposed Western plan, which Occidental is under no obligation to provide, on the terms desired by the said Judge. The personal bias and prejudice evidenced by said statements and remarks are more apparent if viewed in the context of the circumstances and under the background against which they took place, which may be summarized as follows:

(a) The principal statements upon which this affidavit is based took place in Chambers in the United States Courthouse at Oklahoma City, Oklahoma, at hearings had in these proceedings on the 23rd and 24th days of January, 1962, where the Hon. Stephen S. Chandler, in the presence of the parties, attorneys and individuals indicated in the Reporter's Transcript of Proceedings for such dates, made various and numerous statements concerning affiant and the company of which he is President and chief executive officer, which statements the affiant believes reveal and demonstrate an extreme degree of personal bias and prejudice against affiant and Occidental. The source of affiant's information is the official Transcript of the proceedings had on the 23rd and 24th days of January, 1962, a copy of which was delivered to affiant on March 1, 1962, having been received in New York by affiant's New York counsel, Messrs. Breed, Abbott & Morgan, by mail on the 28th day of February. Breed, Abbott & Morgan received the

transcript from Mr. Fellers, affiant's Oklahoma City counsel, it having been released that day and received by him about 5:30 P.M. on Monday the 26th day of February. The substance of the said statements and remarks of the Court is set forth below.

(b) The occasions of the statements were hearings concerning a confirmed plan of reorganization of the debtor which was proposed by Western Oil Fields (hereinafter called "Western"), following the failure of a previous plan of reorganization by reason of the fact that Occidental, the proponent of the previous plan, had reserved and lawfully exercised its right to withdraw from the said plan on notice. The hearings were concerned with difficulties then being encountered by Western in effecting or placing itself in a position to be able to proceed with its plan, with particular reference to the possible terms, conditions and amount of bank loans or borrowed funds required by the reorganized debtor for the success of the Western plan, and the possibility of obtaining such funds.

(c) The statements were made under circumstances and at a time when there were two motions against Occidental pending before the Court. One is a motion of the Trustee, asking that Occidental's preferred stock in the debtor be subordinated to the interests of other preferred and common stockholders. The other is a motion by a creditor asking that certain so-called costs or expenses of the reorganization be "taxed' as "costs" against Occidental, rather than paid by the debtor's estate, in an amount not less than $250,000.

(d) The Trustee's motion involves the circumstances of Occidental's withdrawal from the prior plan. At the time Occidental elected to exercise its reserved option to withdraw (which the Court of

Appeals determined* it had a *right* to and lawfully did exercise), Occidental cited two grounds for taking such action. As one of the two grounds, Occidental declared that an adverse change had occurred in the condition of Parker, financial or otherwise, which substantially affected the value of the property or business of Parker. The cited change was recently discovered knowledge or information that there had been a recent DeGolyer & McNaughton survey or report which estimated the debtor's reserves at a figure drastically lower than previous estimates, with the anticipated result that the level of Transwestern's "take or pay" guarantee of gas purchases from the Ben Hill well (Parker's principal asset), in connection with a proposed agreement than being negotiated, would be correspondingly reduced. Accordingly Occidental declared that the Trustee could not certify to the absence of adverse changes at closing, as he was required to do under the provisions of the Plan. The gravamen of the Trustee's motion is that this assertion by Occidental was "wholly false and untrue", and thereby irreparably harmed the debtor, delaying reorganization, impairing the interests of other stockholders, etc., and was so "unfair and unjust" that Occidental's interest should not receive equal treatment with other similar or even junior stock interests.

(c) The gravamen of the creditor's motion to "tax costs" is that Occidental, by its action in electing to withdraw from the Plan (and notwithstanding the fact that the Court of Appeals for the Tenth Circuit has determined that under the terms of the Plan Occidental had a valid and lawful right to withdraw which it effectively exercised), "refused to consummate the Plan for reasons best known to itself and wholly

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* *Occidental Petroleum Corporation* v. *Walker, et al.*, 289 F. 2d 1 (10th Cir., Feb. 7, 1961).

without fault" on the part of the debtor and others. The motion assumes (though it does not allege) that this was wrongful, and accordingly urges that Occidental is liable for all expenses incurred in connection with the prior Plan, including all attorneys' fees and costs, estimated at "not less than $250,000.00".

(f) In addition the Judge has repeatedly referred to and emphasized the imminent likelihood of a suit by the Trustee against Occidental for damages on account of its withdrawal from the prior plan, based upon the wording of the clause whereby the plan provided that if Occidental exercised its right of withdrawal, it would reimburse the Trustee for certain expenses incurred in connection with the Plan in an amount not exceeding $25,000, and would not otherwise be liable. It is claimed that under technical provisions or peculiarities of Oklahoma law this agreement for reimbursement, notwithstanding its contractual nature, unwittingly (Judge Wallace had approved and confirmed the agreement and the provision) constituted a "penalty" which is said to be void under Oklahoma law and that in such case the rest of the same sentence (which also contains the recently upheld right of withdrawal), providing for no other or further liability, must also fall. Accordingly it seems to be alleged that Occidental should be held monetarily liable for damages on account of any and all loss, injury or diminution suffered by the debtor's estate as a consequence of the fact that the prior plan was not consummated, particularly if Occidental could be said to have acted in "bad faith".

(g) Following Occidental's exercise of its right not to proceed with the prior plan of reorganization, the Judge repeatedly suggested that if affiant and certain other persons against whom the Trustee had asserted claims would assist in financing the plan of reorgani-

zation propounded by Western Oils, Inc. (which was the subject of the hearings on the 23rd and 24th of January at which the specific statements showing personal bias and prejudice were made), then the Court would take such action into consideration in deciding whether to order suits to be filed, and presumably would not order or permit such suits to be filed if sufficiently substantial services or assistance had been rendered to the debtor in effectuating the Western Plan of reorganization. Accordingly affiant, on behalf of Occidental, undertook to assist Western, at the initiative and urging of one Hayutin, to borrow two million dollars from the California Bank, in the form of one loan of one million seven hundred thousand dollars from the Bank, together with a separate and additional note for three hundred thousand dollars to be guaranteed by Occidental. Certain conditions were attached to the extension of said loan. In these hearings the Judge reacted to these conditions by calling them "unsavory" and "shocking," and complaining that they were unreasonable, unconventional, and impossible for the debtor to meet, would inevitably precipitate further insolvency, and were designed to have that effect, demanded more favorable loans, terms and conditions, or monetary assistance for the Western's plan, adverting to prosecution of the trustee's claims against Occidental and others as an imminent alternative.

It is against this background, and in the context of these circumstances, that the full import and significance of the various statements and remarks, and the fact that they demonstrate personal bias and prejudice against affiant and Occidental, becomes apparent.

(h) At these hearings, the judge described the trustee's alleged monetary claims against Occidental (which the Judge is to hear and decide) as admittedly

based on the theory that the Plan's $25,000 reimbursement provision is a "penalty", which is said to be void under the Oklahoma law, and that this invalidity in turn renders the withdrawal provision, which is part of the same sentence, entirely void (a theory entirely inconsisfent with the Court of Appeal's decision upholding that provision).

The judge has also expressed his views on the merits of the question by declaring his opinion that the claims asserted against Occidental—a matter on which there is yet to be a hearing—have a value in excess of a million dollars, saying:

"If Mr. Hammer put up the whole million dollars of equity capital and had a million dollars worth of this stock he would be getting out from under an obligation that if the stock was worth nothing he would be very fortunate. Not only that, he would be making money." T. 97.

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"This estate, if you take it, Mr. Barnholt, you've got another asset, and that is whatever Mr. Hammer's liability is to it. And I consider that liability very real." T. 138.

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On the merits of the so-called claim to subordinate Occidental's preferred stock, he said:

"We have always considered, and I have, that he (Hammer) didn't own the two hundred and forty thousand shares, because I've always felt that he couldn't walk away from this court with it; that the damages would far exceed whatever his interest was. The trustee has a motion on file to subordinate it, or something. What is that?

Mr. Irvin: Yes, sir; to subordinate his stock.

The Court: That is the reason I haven't considered that he had any." T. 127.

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"I felt that the stockholders, since they hadn't financed it had three and a half years to do it had lost their equity of redemption, and here *I find that one of the prefered stockholders, two hundred and forty thousand shares of common stock, but if it is worth just a dollar in these combined companies, that gives him two hundred and forty* thousand dollars that I don't think he ought to have.*" T. 131.

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Prejudice and prejudgment upon the trustee's allegation that Occidental has "slandered" the debtor's property appears in the following statement:

"I had ordered not to let anybody on the lease, and *I ordered that for the reason that, as you say, those properties have been slandered.* And I didn't want anybody to be in a position to express an opinion from an actual test." T. 42.

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The personal and inflexible nature of the Judge's bias and prejudice appears in the following statements:

"You're not going to be able to talk me out of anything. It is just what can you do. I'm not going to change my mind on any of this. *I couldn't be hoodwinked into changing my mind about the conclusions that I have come to about Hammer at all.* I don't *want my intelligence impugned.* If you have got something you can do and want to say, 'I can do this,' I'll listen to you, but there is no use in your making an argument to me. You can't sell me a nickel's

* Emphasis in all instances is supplied.

worth of anything. *I've got my mind made up and I know what the facts are about this whole deal.* I am just as sure as if they were written up there in blood on the wall where we could see them." T. 92-93.

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". . . This rule I follow, that living a long time has taught me is true, is that whenever, for example, anything comes up in any transaction where you think a man gets out of line, is to stop doing business with him then. My idea was at a certain time, which I announced to everybody, that I would stop doing business with Mr. Hammer from that standpoint." T. 99-100.

In considering the statements of the Court, it must be remembered that the names "Hammer" and "Occidental" are interchangeable as far as the Court is concerned and are so employed throughout the transcript; as the Judge himself said:

"Of course, Hammer is Occidental in any of his actions here . . ." T. 148.

The Judge's response to the conditions proposed for protecting the bank's two million dollar loan are so over-wrought, and his suspicions so slanderously worded and incessantly repeated as to show plainly his personal bias and prejudice, as exemplified in the following illustrative statements:

". . . *they are trying to, in my opinion,* step in here and *choke this company to death for the benefit of somebody else so that they can milk it and so forth.* I intend to say it from the bench, because I verily believe it to be true, and I believe it to be my obligation to do so. That is not going to hurt any other bank loan. And this bank, if it is goinng to loan this company money, and it is managed by Mr. Hammer, I would be fearful, if I were Western, and Mr. Barn-

holt, I'd be fearful of letting them do it. I know he is in one heck of a shape, and he's willing to do anything to keep his company now that he is in this terrible condition brought about *solely* and I think *designedly*, to put him in a position where he would have to agree to anything. All the landmarks are there." T. 125-126.

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". . . Mr. Barefoot . . . knows that I stated at that time that *this convinced me since my former experience with Mr. Hammer that most likely*, or it was entirely possible, *that it was his intention*, and *that these were not put in* here, these requirements, *in good faith, but to make it possible for one of two things to happen.* He would be in control of this company or be in a position to milk it. There are two ways to gobble up a company. One is to milk it and the other is to get yourself in control of it and oust the people who are in control of it." T. 61.

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"*I came to the conclusion that Mr. Hammer and I'm still of that conclusion, hopes to milk it* and do it the other way rather than make a profit on the stock, *that he prefers to milk the company and take those nice assets and the drilling equipment* and the building, and anybody would have to have them that is in the oil business." T. 66-67.

". . . I realized that there is another asset that there has not been too much said about, and that is in South America, and that in a pinch that possibly could be sold. It is on the books for four or five hundred thousand dollars. And *in the event that there was any plan to milk this, and I have to always assume that it could be in Mr. Hammer's mind*, because I have to guard against every eventuality, then the next thing would be—well, it is on the books, I think

the testimony showed that it was—well, it used to be on the books at five million dollars because that's what they thought the actual cash value was. And they might just say, 'Well, the only thing we can do is just take what is on the books at,' and Mr. Hammer would give them that much for it." T. 67.

". . . for Western to place themselves in the hands of Mr. Hammer and losing control of the company, which, it would seem to me that the present officers and directors would not intend to be doing . . . unless they were in such a cramp that they were having their arm twisted. . . . I haven't closed my mind about it, but as we said the other day when we were here, when I learned that Hammer was the one who was delaying it by requiring an extra test of the well, instead of the bank, then *I said to Mr. Hayutin, "Your partner is doing this* and you have stated that you didn't know that he was. *He is maybe double-crossing you."* Now, it could still be possible that that is true. Mr. Hayutin, however, as he stated this morning, has known Mr. Hammer a long time, and if Mr. Hammer's mind works like that, whether he is on notice would depend on how naive he is, and whether Mr. Barnholt is on notice of right where he was about to jump depends on how naive he is." T. 74.

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"In looking at this picture of Western and Parker, the goodies down there are unmortgaged and they are real nice and are really liquid at forced sale. They're worth twice as much to keep and they are nice properties to own. I felt that somewhere *it could be possible that Mr. Hammer got the idea*, 'I'm not going to make my money off of the equity capital I put in here. *I'm going to make it off of milking it* where I don't have to share it with anybody.'" T. 75.

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"I stated to him that *all of the earmarks were* on here of Mr. Hammer desiring to have control of this company, by requiring the delay and *wanting to delay it six weeks more*, which would have put it right up to about now, to get other tests, that he would have the Western in a position where before the 30th they couldn't go anywhere else and get the money. I am sure that it is pretty hard, after you have negotiated with one bank and they have withdrawn from a loan, to get it at all from another bank. And, unquestionably, the company would be in that shape; whether they knew it or not, I know it as an experienced lawyer. And I know that *they had either wittingly or unwittingly put themselves in what we call in Oklahoma, "The Wewoka switch." They were right up against the cold steel.*" T. 60.

The zeal exerted to persuade Occidental into financing Western's plan of reorganization on Judge Chandler's terms, and the recurring and accompanying references by the Judge in this context to the implied relationship and assumed value of Occidental's asserted but as yet unadjudicated liability, are such as to virtually raise a disqualifying conflict of interest, and by their number and repetition illustrate the Court's preoccupation with his personal animus against Hammer. For example:

"Mr. Barefoot: . . . *Your Honor made this statement* in effect that—*you turned to Mr. Haynie and staid, 'Now, go out and get me that two and a half million dollars and make Dr. Hammer help you'*

"The Court: *That is right.*" T. 13.

In this connection see also T. 13, 14, 99, 100, 124, 125, 135, 136.

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5. Additional and particular facts and reasons for the belief that said personal bias and prejudice exist are the following statements of Judge Chandler at and in the record of, the hearings on the 23rd and 24th of January:

(a) Judge Chandler made repeated remarks about Hammer's "ethics" and "morals", questioning Occidental's motives and good faith in exercising its right of withdrawal, etc., and expressing resentment and censure at Occidental's exercise of its unquestionable and judicially confirmed contractual right to withdraw from the earlier plan. He stated in substance:

That Occidental withdrew from the prior plan "arbitrarily". T. 11.

That there were "indications" that Occidental didn't intend to go through with the Plan at the very time that Judge Wallace confirmed it. T. 11.

That if Occidental had lost its earlier appeal it would just have to pay damages and Judge Chandler would have to find, because his "feeling about *the question of his (Hammer's) good morals and walking away from the proposition* was in my mind something that I couldn't approve him as a managing officer of a company". T. 69.

That he stated he thought that maybe Occidental had withdrawn just to get the cash payment reduced, that he took the position Hammer couldn't get this by "backing out of that deal", and that unless he (Hammer) went through with the deal "just like it was and quickly", that would put doubt in the Judge's mind as to "his (Hammer's) good faith to begin with". T. 12.

That he came to the conclusion that Occidental's "money was all committed and he (Hammer) just didn't have enough to pay in or he would have paid it in. There was indication of that. I don't recall what the evidence was". T. 12.

That he took the position "and *told everybody connected with it*" that since Hammer had not paid the money in (i. e., *since Occidental had withdrawn*) he would never have this company directly or indirectly "because the Court would feel that *his action was such that it likely would be improper for me to turn it over to anybody whose integrity I even doubted*". T. 12.

Speaking of his unwillingness to have Occidental or Hammer have "anything to do with the company" to which he would turn over the stockholders, he said: ". . . I would have a responsibility to feel that I had placed the stockholders of this company in the hands of *good people who at least might lose their money, but they would do it conscientiously and they might even do it from mismanagement but they would not do it from a lack of ethics.*" T. 15.

* * *

In my opinion the most flagrant example of personal bias and prejudice exhibited by the Judge is the following:

"That all goes back to my feeling all along that I couldn't again, and I never did, except for a short time, do business with Mr. Hammer. I tried here in the presence of all of the people to get him to go ahead and go through with the deal, and I thought maybe I had him talked into it. He is a charming gentleman, but he didn't go through with that deal. Then *I had to come to the conclusion since he walked away from that one and during the conferences that I was having then the information came to me that could be construed to mean that when he agreed to it—to the Court confirming the plan that he intended right then at that certain date to write the check for twenty-five thousand dollars and walk away from it.* As soon as I found that I couldn't talk him into going

through with the plan, I made the statement that I couldn't ever let him, if he would come in thereafter and say, 'Now I'm ready to go through with Occidental—' In other words, that appeal in the Court of Appeals, if he lost it, he could not then come in and say, 'Well, I'm ready to go through!' *He would just have to pay the damages, because I would have to find that, because of my feeling about the question of his good morals and walking away from the proposition was in my mind something that I couldn't approve* him as a managing officer of a company that I would turn these properties over to." T. 68-69.

* * *

The Judge's intransigent attitude toward the Court of Appeals' decision vindicating Occidental's rights of withdrawal is shown by the following quotation (in the Judge's own words) of the Trustee's valued claim, which warrant repetition here:

". . . the trustee thinks that when the hearing is had that it will turn out that the twenty-five thousand dollars is a penalty and, therefore, illegal under Oklahoma law and, therefore, void. Then, *if that clause is void, the entire provision about the withdrawal would, therefore, be void because it is all in the same sentence.*" T. 15.

* * *

6. Affiant further avers that contrary to the Judge's statements Occidental entered into the prior plan of reorganization, as originally confirmed by Judge Wallace, in good faith and exercised its right of withdrawal because it believed it had a legal right to so do and on the grounds heretofore stated in the notice of withdrawal.

Affiant further avers that the conditions imposed by the United California Bank in connection with its pro-

posed loan were imposed by the Bank for its own business protection and for no other purpose. See page 11 of this affidavit referring to T. 92-93. In addition see T. 65 where the Court purports to say that deponent is in control of the United California Bank, a two billion dollar institution, which on its face is preposterous and contrary to the facts.

7. Your affiant has been informed by Mr. Berglund that he knows of certain proceedings in the latter part of January in 1962 before this Court, involving the merits of these proceedings at which neither your affiant nor his counsel were present. Your deponent was further informed that testimony was taken stenographically at these said hearings. It is elementary that any party in interest under our system of jurisprudence is entitled to have notice of and be present, either personally or through counsel, at any hearing at which his or their rights might be affected. As a matter of fact, the following took place on page 34 of the transcript of the hearing before the Honorable Stephen S. Chandler in open court on January 30, 1962:

"Mr. Barefoot: I want the record to show that if and when I ever believe I have reached that situation I, of course, will do something about it.

"I want, at this time, in open court, to request a copy, or several as I will notify the reporter, of everything that he has reported during the past two weeks in connection with the Parker Petroleum Company matter, whether it be in the courtroom, chambers or elsewhere.

"The Court: You will get, I am sure, as soon as he can get it out."

It is therefore respectfully requested and demanded that transcripts of any hearings not as yet released by this court be immediately ordered to be released and furnished your deponent and Occidental Petroleum and be made part of this application so that complete justice may be done. It is elementary under our system of jurisprudence that

parties to any proceeding be furnished with copies of the entire record. Your deponent and Occidental will pay the proper charges for the same.

8. Affiant further avers that in view of the aforesaid statements and attitude of the Judge as heretofore made known and reported to him, he verily believes that neither he nor Occidental Petroleum Corporation can possibly receive a fair and impartial hearing before the said Judge, or fair and impartial treatment from him, and that in view of the aforesaid personal feelings (as distinguished from opinions) and personal bias and prejudice he believes to be adequately reflected in the foregoing statements and excerpts, affiant believes that the Judge has formed a preconsidered judgment about the background, facts and law affecting the pending matters, and further in the opinion and the belief of affiant has formed such conclusions on the basis of information or statements outside of the record in these proceedings (since no adequate basis in the record for certain opinions and factual statements set forth in the transcript is known to your affiant), or on the basis of personal bias and prejudice engendered by the reversal of his prior order. Affiant further avers that in view of the foregoing facts and statements he believes that the Judge is so incensed by the failure of the prior plan as the result of the reversal of his prior ruling or has been so deeply preoccupied with the over-riding purpose of effectuating the present Western plan of reorganization at the time of these hearings during the month of January, that he sees Occidental as a scheming enemy behind the debtor's difficulties. Affiant further avers that under such circumstances and in view of the aforesaid statements it appears that it would be humanly impossible for this Judge to eliminate the personal bias and prejudice heretofore shown so as to be able to fairly hear and decide the pending motions now set for hearing on March 13, 1962, or for purposes of hearing or deciding any other claims of any nature whatsoever asserted against Occidental in these Chapter X

proceedings, or orders or judgments the substance of which affect it other than as one member of the class of preferred stockholders.

WHEREFORE, affiant demands that the Hon. Stephen S. Chandler proceed no further on this cause, and that another Judge be assigned to hear this action.

OCCIDENTAL PETROLEUM CORPORATION
OF LOS ANGELES

by ARMAND HAMMER
Armand Hammer, *President*

Subscribed and sworn to before me this 2nd day of March, 1962.

My commission expires April 24, 1963.

MARIE N. BORGES
Notary Public

CERTIFICATION

The undesigned, counsel of record for Occidental Petroleum Corporation, hereby certify that the foregoing Affidavit of disqualification of Hon. Stephen S. Chandler is made in good faith.

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s/ BERT BAREFOOT, JR.
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APPENDIX B

District Court Order Rejecting Application for Disqualification

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 10,807

In Proceedings for the
Reorganization of a Corporation

In the Matter of

PARKER PETROLEUM CO., INC., a corporation, *Debtor*.

ORDER

Upon consideration of the Application and Affidavit for Disqualification filed herein by Occidental Petroleum Corporation and Armand Hammer, its President, the Court finds the allegations contained in the Application and Affidavit of applicants that he is disqualified to hear this matter because of personal bias and prejudice against Occidental and Hammer to be insufficient, and states that all of the statements set out in the affidavit are findings and conclusions reached from consideration of evidence presented in these proceedings; that the Court never knew or had an opinion regarding the parties prior to his assignment to hear this proceding and could not, did not and does not now have any such personal malice or prejudice against said parties as is contemplated by 28 U.S.C. § 144. That many of the statements in said affidavit are taken out of context and none of the statements could be understood except in connection with all of the facts and circumstances appearing in this proceeding to date, including the transcripts of January 23, 24 and 30, 1962; and that under the law, conclusions reached and opinions stated by the Court from evidence in the proceedings do not and could not constitute such grounds for disqualification as are contemplated by 28 U.S.C. § 144.

The Court further states that prior to the filing of the motion to disqualify, he had asked the Honorable Paul Duncan, Special Master, to hear the matters involving applicants, and counsel for applicants were so advised on March 3, 1962, by the attorney for the Trustee, with the further statement that if they preferred that such matters be tried by another judge instead of the Special Master, that such matters would be assigned to another judge of the court for trial and determination. This Court has at no time shown a disposition to the contrary. The Court did not have at the time of filing of the affidavit, and does not now have any intention of trying or deciding any question of fact in this proceeding involving applicants.

In view of the facts, there was and is no question of disqualification to be determined since the Court had no intention of hearing and determining such matters. The affidavit is therefore adjudged to be legally insufficient.

Chief Judge

APPENDIX C

Opinion of Court of Appeals for the 10th Circuit and Order of 10th Circuit Judicial Council

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

On Petition for Writ of Mandamus or Prohibition

No. 6972—March Term, 1962

Occidental Petroleum Corporation, *Petitioner*,

v.

Hon. Stephen S. Chandler, United States District Court Judge for the Western District of Oklahoma, *Respondent*.

In the Matter of

Parker Petroleum Co., Inc., a Corporation, *Debtor*.

In Proceedings for the Reorganization of a Corporation. No. 10807

Bert Barefoot, Jr., and Howard M. Rea for Petitioner.

Francise S. Irvine for Respondent and for Trustee of Parker Petroleum Co., Inc.

V. P. Crowe, Phil Daugherty and Roy Lytle for Respondent.

Earl A. Brown for Common Stockholders of Parker Petroleum Co., Inc.

G. C. Spillers for Webster Drilling Company.

Frank A. Bruno for Western Oil Fields, Inc.

Kirk Windle for United States Securities and Exchange Commission.

Gene M. Gardner for Protective Committee of Creditors.

Delmar L. Staggner for Certain Unsecured Creditors.

Herbert F. Hewett for John S. Bottomley and C. J. Hoffman.

Before MURRAH, Chief Judge, and PICKETT, LEWIS, BREITENSTEIN and HILL, Circuit Judges.

Per Curiam.

Occidental Petroleum Corporation petitions for a writ of mandamus or prohibition to prevent the Honorable Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma, from proceeding further in a Chapter X bankruptcy proceeding pending in that court and involving Parker Petroleum Co., Inc. The basis for the petition is the claimed disqualification of the Judge. The original petition sought the removal of the Judge from those parts of the proceedings directly affecting Occidental. An amended petition seeks the removal of the Judge from the entire proceedings. We have heard the matter on the petition, the amended petition, the response, the evidence adduced at three days of hearing, the briefs, and the oral arguments. Counsel have appeared and been heard not only for the petitioner and respondent but also for others having an interest in the bankruptcy proceedings.

The jurisdiction of this court is questioned on the ground that a ruling on a motion for disqualification made under 28 U.S.C. § 144 is reviewable only on appeal and that the All-Writs Statutes, 28 U.S.C. § 1651, does not apply. The facts alleged and proved established this case as an exceptional case in which the preservation of the right to fair and impartial hearing and disposition requires the exercise of our jurisdiction at this time. The question of the disqualification of a trial judge was presented in United States v. Ritter, 10 Cir., 273 F.2d 30, 32, and we held that we have the "power and inescapable duty" to act and that it makes no difference whether such power is conferred under the All-Writs Statute or under the inherent powers

of a United States Court of Appeals "to effectuate what seems * * * to be the manifest ends of justice." Application to the United States Supreme Court for relief from our action in the Ritter case was denied. 362 U.S. 946.

From the record made before us we find and conclude:

1. The Judge has conducted "closed-door hearings, meetings and discussions in chambers" at which some but not all of the interested parties were present at the invitation of the Judge and from which the attorneys for some of those present were excluded with the direction of the Judge that the fact of such proceedings and the matters which transpired therein should not be reported to those attorneys. At these hearings, meetings and discussions matters pertaining to the bankruptcy estate and materially affecting not only those present but those excluded therefrom were considered.

2. After the filing of the petition in case No. 6972, the Judge tried to prevent a court officer from the performance of his official duties and responsibilities in matters relating to the bankruptcy estate.

3. The Judge has a personal enmity, hostility, bias, and prejudice against Occidental and cannot therefore fairly and impartially hear and determine any matter involving Occidental.

4. The proper administration of justice requires that all further proceedings in connection with the Parker bankruptcy be heard and determined by another judge.

It is therefore ordered that the Honorable Stephen S. Chandler, respondent herein, shall proceed no further in the matter of Parker Petroleum Co., Inc., Debtor, No. 10807 Bankruptcy on the docket of the United States District Court for the Western District of Oklahoma, and that all further proceedings in said cause No. 10807 Bankruptcy shall be heard and determined by a judge to be designated

by the Chief Judge of the Tenth Circuit of the United States.

This disposition of the matter makes it unnecessary to determine the issues raised by the petition of the Trustee of Parker Petroleum Co., Inc., for a modification of the stay order entered herein on March 14, 1962.

The Clerk of this court is directed to forthwith transmit a copy hereof to the Clerk of the United States District Court for the Western District of Oklahoma for filing in its case No. 10807 Bankruptcy.

In the Judicial Council of the Tenth Circuit of the United States

SPECIAL SESSION—APRIL, 1962

IN THE MATTER OF THE PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE REORGANIZATION OF PARKER DRILLING CO., INC., DEBTOR, DOCKET NO. 10807 BANKRUPTCY.

ORDER

On May 6, 1958, Parker Petroleum Co., Inc., filed in the United States District Court for the Western District of Oklahoma a petition for reorganization under Chapter X of the Bankruptcy Act, said cause being docketed in that court as No. 10807 Bankruptcy. A Trustee was appointed. No plan of reorganization has been consummated. Actions taken in the proceedings have resulted in two appeals, docket Nos. 6460 and 6510, which have been heard and determined by the United States Court of Appeals for the Tenth Circuit.

On March 6, 1962, Occidental Petroleum Corporation filed in the said Court of Appeals its petition for a writ of mandamus or prohibition to prevent the Honorable Stephen

S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma, from proceeding further in the Parker bankruptcy matter, said petition being docketed as No. 6972. Later an amended petition and a response were filed. The issues raised were heard by a panel consisting of Chief Judge Murrah and Circuit Judges Pickett and Breitenstein on March 12 and 13 and April 10, 1962. Evidence was received and arguments presented by the petitioner, the respondent, and others interested in the Parker bankruptcy. At the conclusion of the April 10 hearing the sitting judges determined that the issues raised as to the qualifications of the Honorable Stephen S. Chandler to proceed further were of such a serious nature that the matter should be presented to the Judicial Council of the Tenth Circuit of the United States.

Thereafter, the respondent by identical telegrams addressed to each active member of the court requested a hearing en banc. Pursuant to such request and to notice to all parties in interest, the court met en banc on April 20, 1962, and heard further statements of counsel. At such hearing on April 20, all parties present consented to the consideration of the case by the court en banc on the record as then made and as previously made. At the conclusion of the en banc hearing the court affirmed the determination of the previously sitting judges that the issues raised as to the qualifications of the Honorable Stephen S. Chandler to proceed further were of such a serious nature that the matter should be presented to the Judicial Council of the Tenth Circuit of the United States.

The Judicial Council of the Tenth Circuit met at Denver, Colorado, at 11 a.m., Friday, April 20, 1962, with all members present. By the direction of the Judicial Council the clerk of the court had notified the Honorable Stephen S. Chandler that it was the wish of the Council that he appear if he could conveniently do so. The Honorable Stephen S. Chandler did not appear at the Council meeting.

The Judicial Council having considered all matters presented to the court in case No. 6972 now finds and concludes:

1. The Judge has conducted closed-door hearings, meetings and discussions in chambers at which some but not all of the interested parties were present at the invitation of the Judge and from which the attorneys for some of those present were excluded with the direction of the Judge that the fact of such proceedings and the matters which transpired therein should not be reported to those attorneys. At these hearings, meetings and discussions matters pertaining to the bankruptcy estate and materially affecting not only those present but those excluded therefrom were considered.

2. After the filing of the petition in case No. 6972, the Judge tried to prevent a court officer from the performance of his official duties and responsibilities in matters relating to the bankruptcy estate.

3. The Judge has a personal enmity, hostility, bias, and prejudice against Occidental and cannot therefore fairly and impartially hear and determine any matter involving Occidental.

4. The effective and expeditious administration of the business of the United States District Court for the Western District of Oklahoma requires that all further proceedings in connection with the Parker bankruptcy be heard and determined by another judge.

Accordingly, pursuant to the power and authority of the Judicial Council under the Act of June 25, 1948, c. 646, § 332, 62 Stat. 902, 28 U.S.C. § 332, it is ORDERED that the Honorable Stephen S. Chandler shall proceed no further in the Matter of Parker Petroleum Co., Inc., Debtor, No. 10807 Bankruptcy on the docket of the United States District Court for the Western District of Oklahoma.

The Judicial Council respectfully requests the Honorable Alfred P. Murrah, Chief Judge of the United States Court of Appeals of the Tenth Circuit, to designate and assign a United States District Judge to hear and determine all further proceedings in the Matter of Parker Petroleum Co., Inc., Debtor, No. 10807 Bankruptcy.

An original copy of this order shall be retained in the records of the Council. A duplicate original shall be forthwith transmitted to the Clerk of the United States District Court for the Western District of Oklahoma to be filed by him as a part of the record in No. 10807 Bankruptcy.

Done by the Judicial Council of the Tenth Circuit this 20th day of April, 1962.

ALFRED P. MURRAH
Chief Judge

JOHN C. PICKETT
Circuit Judge

DANA T. LEWIS
Circuit Judge

JEAN S. BREITENSTEIN
Circuit Judge

DELMAR C. HILL
Circuit Judge